

Frederick County Community Development Division

Zoning Map Amendment

May 21, 2014

CASE NUMBER: R-88-50 (A)

APPLICANT: Lawrence Hogan & Ilona Hogan

REQUEST: To delete two conditions of the original rezoning approval (Ordinance # 89-39-570) that rezoned the property from Agricultural to R-16 in 1989.

LOCATION: West side New Design Rd. south of Crestwood Blvd.



I. Background

The subject property was originally rezoned (Case # R-88-50) in 1989 from Agricultural to R-16 High Density Residential. The Board of County Commissioners (BOCC) approved the rezoning, effective June 12, 1989, Ordinance # 89-39-570 with the following conditions:

1. A maximum of 144 dwelling units may be constructed on this property.
2. The maximum floor area for new construction on this site (excluding the house and outbuildings existing on the date of the enactment of this Ordinance) shall be 100,000 sq. ft.
3. In accordance with the site development plan submitted by the applicant with this application in this case, no more than 25% of the property shall be covered in buildings, parking area or access roads. The remaining area will be in green area or outdoor recreation areas.

In July 1990 a site plan (SP 90-15) was approved for a 144 unit elderly housing development called Manchester Court with a cluster of 2-3 story buildings. This site plan expired in April 1992, which would require a new site plan application and review.

In 1999 a new site plan was submitted and was ultimately denied due to failing the APFO tests for schools and sewer.

In 2003 another site plan was submitted for a 116 unit age-restricted apartment development called Evergreen Woods Apartments. There is no record of this site plan even making it to the Planning Commission much less receiving approval.

II. Approval Criteria

§ 1-19-3.110.4 APPROVAL CRITERIA (Zoning Map Amendments)

(A) Approval or disapproval of a request for an individual zoning map amendment or floating zone reclassification shall be determined through review of several criteria. The Planning Commission and Board of County Commissioners review will include, but not be limited to:

- (1) Consistency with the comprehensive plan;
- (2) Availability of public facilities;
- (3) Adequacy of existing and future transportation systems;
- (4) Compatibility with existing and proposed development;
- (5) Population change; and
- (6) The timing of development and facilities.

For individual, i.e. piecemeal zoning map amendments for Euclidean zoning districts (R-1 etc.) the following criteria also applies.

(B) In addition to the criteria above, approval or disapproval of a request for an individual zoning map amendment shall be granted only where a finding has been made that there was:

- (1) A substantial change in the character of the neighborhood where the property is located;
or
- (2) A mistake in the existing zoning classification.

III. Applicant's Proposal

The applicant is requesting to delete the following two conditions from the original rezoning, Ordinance # 89-39-570, in 1989:

1. The maximum floor area for new construction on this site (excluding the house and outbuildings existing on the date of the enactment of this Ordinance) shall be 100,000 sq. ft.
2. In accordance with the site development plan submitted by the applicant with this application in this case, no more than 25% of the property shall be covered in buildings, parking area or access roads. The remaining area will be in green area or outdoor recreation areas.

The first condition that limits the overall development to a maximum of 144 dwellings will remain.

At this time a new development plan has not been prepared. While the original idea at the time of the 1989 rezoning and the previous site plans contemplated an elderly/age-restricted multi-family development a new submission could be an all-age development with any dwelling type from single-family detached to multi-family.

The two conditions requested to be deleted were likely geared to the idea that any development would be in a multi story building with a relatively small footprint.

IV. Evaluation - Relationship to County Plans

Consistency with Comprehensive Plan

The property is designated High Density Residential on the County Comprehensive Plan and is located within the Ballenger Creek community growth area. The existing R-16 High Density Residential zoning is consistent with the Comprehensive Plan and would remain so even with the deletion of the two conditions.

Compatibility with Existing and Proposed Development

The existing R-16 zoning district would permit a density of 16 dwellings/acre and would also allow for any type of dwelling from single-family detached to multi-family. Based on the total parcel size of 9.5 acres the maximum development potential of the site could be 153 dwelling units. The original rezoning condition limiting the maximum number of dwelling units to 144 would result in a **gross density** of 15 dwellings/acre.

The R-16 zoning district has a maximum building height for multi-family structures of 100 feet.

The Crestwood Village development adjoins the site on three sides and is comprised of mostly duplex dwellings with a few clusters of attached/townhouse type units that adjoin the north side of the subject site. Across New Design Rd. to the east are mostly townhouse development and two churches. Further to the south on New Design Rd. is the Frederick Villas development with a cluster of four multi-family structures.

This site is one of only a handful of undeveloped parcels remaining in the Ballenger Creek community growth area, which has the County's greatest mix of single-family, townhouse, and multi-family developments.

Natural Features

The site relatively flat and is mostly forested. Just to the west of the site is Kings Branch, which is a tributary to Ballenger Creek. There are some flooding soils associated with this tributary that extends into the site.

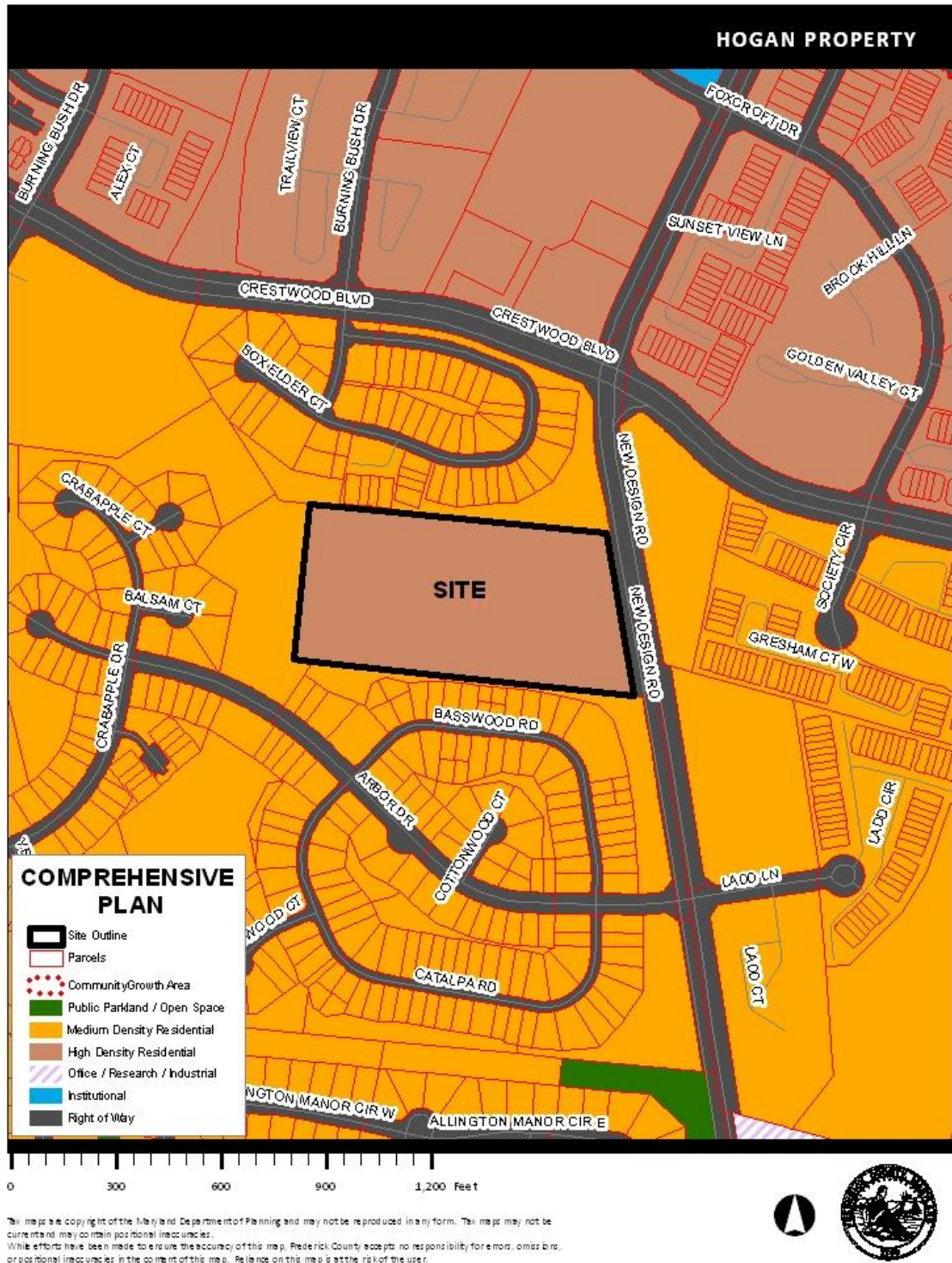
The site includes the Hogan residence, which is a stone farmhouse known as Manchester built in the late 1700's for the Daniel Scholl farm. The Scholl family includes Margaret Scholl Hood. An evaluation of the property in 1996 determined that it was eligible for the National Register, however, the Maryland Historical Trust found that it would not be eligible due to insufficient integrity to represent its appearance during the period (1894 – 1913) Margaret Scholl Hood was involved with the cause of women's education.

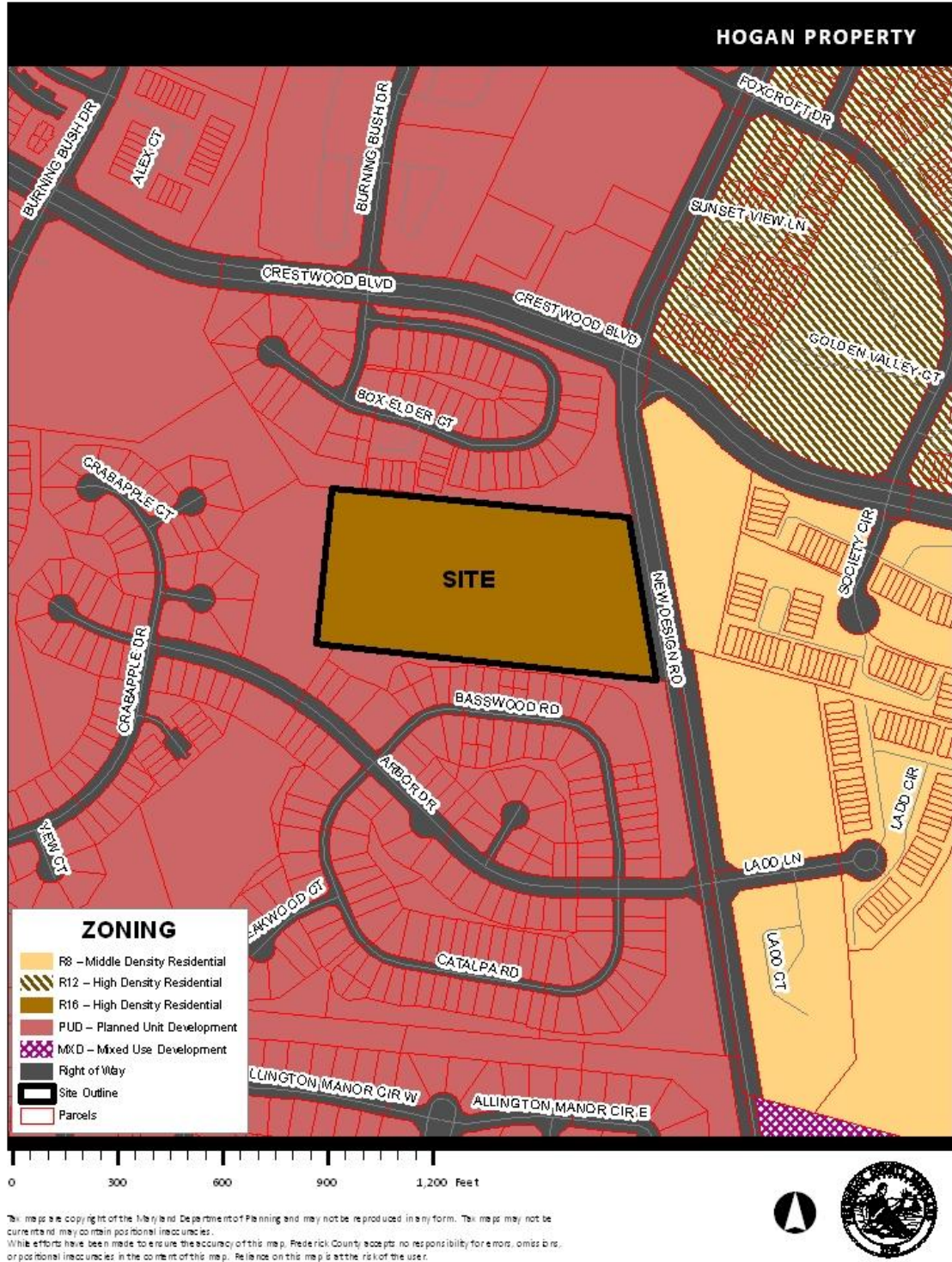
Population Change

Current Neighborhood Population: 1,848 (2010 Census Block data)

Potential Additional Population: 389 (144 dwellings x 2.7 persons/household)

Potential Total Neighborhood Population: 2,237





V. Evaluation – Availability of Public Facilities

Schools

The pupil yield analysis below assumes either a multi-family or townhouse all-age development. The Adequate Public Facilities Ordinance review would be conducted as part of the subdivision or site plan submission for an all-age development.

Total Potential Dwellings: 144 Townhouses OR Multi-Family

School	Total Enrollment/ State Rated Capacity ¹	% of State Rated Capacity	Total Projected Pupils ²	
			All townhouses	All Multi-Family
Ballenger Creek Elementary	654/663	99%	29	8
Crestwood Middle	544/600	91%	15	3
Tuscarora High	1,468/1,606	91%	21	5

1. Source: FCPS Quarterly Enrollment Report – March 31, 2014
2. Pupil Yield Factors - 2007

Programmed Improvements

None in the current FY 2014-2019 CIP

Planned Improvements

Ballenger Area Elementary – new elementary school (725 seats) on the Ballenger Run PUD site located across from Tuscarora High School.

Water and Sewer

The site is classified S-1/W-1 indicating existing service likely for the existing residence.

Public water will be provided through the New Design water system, which withdraws water from the Potomac River. The New Design Water Treatment Plant has a permitted capacity of 25 million gallons/day (MGD) and has a current average daily use of approximately 16 MGD. Sewer service will be provided by the Ballenger-McKinney wastewater treatment plant. The current Ballenger plant has a treatment capacity of 6 MGD and with the McKinney expansion, which is under construction, will be expanded to 15 MGD and is expected to be completed in the fall 2014. Current average daily treatment flows at the Ballenger WWTP is 5.7 MGD.

Development of 144 dwelling units would require approximately 36,000 gallons/day of both water and sewer capacity.

Programmed Improvements

None in the current FY 2014-2019 CIP

Public Safety Facilities

The Westview Fire Station is located less than ½ mile from the site on New Design Rd

Police protection would be provided by the County Sheriff's Office.

Libraries

The C. Burr Artz Library, located in downtown Frederick, would be the nearest library to the site.

Parks and Recreation Facilities

The Ballenger Creek District Park is approximately two (2) miles from the site.

Transportation Network

The site has approximately 471 feet of frontage along New Design Rd., which is a 4-lane divided roadway. There is an existing break in the median to accommodate future access to development on the site. There are no opportunities for street connections into the adjoining Crestwood Village development.

There is an existing sidewalk along the west of New Design Rd.

Traffic Volumes on Adjoining Roads

AADT: Annual Average Daily Traffic

New Design Rd. – 11,251 (2009) – south of Crestwood Blvd.

Highway Plan Classifications for Adjoining Roads

New Design Rd. – Major Arterial (80 + ft right of way)

Programmed Improvements

None in the current FY 2014-2019 CIP

VI. Summary of Findings

A. MISTAKE IN ZONING

In order to find that a mistake was made in the existing zoning, one must find that either an assumption or fact, which was used as a basis for a rezoning decision, has been proven inaccurate or incomplete. The focus is not whether the comprehensive zoning decision itself was right or wrong, but whether the assumptions or facts the zoning decision was based on were inaccurate or incomplete.

Even when a finding of mistake is made, it merely gives the Commissioners the ability to grant a piecemeal rezoning, but does not require it. Without a finding of mistake, the Commissioners can only rectify bad judgment decisions through later comprehensive rezoning.

B. CHANGE IN THE CHARACTER OF THE NEIGHBORHOOD

Based on recent court decisions, staff has concluded that the most appropriate measure for determining change in the character of the neighborhood is change which has occurred since the last comprehensive rezoning. For change to be considered, it must not have been considered or anticipated by the Comprehensive Plan. As a supporting measure, other factors may be considered depending on the nature of the request. Even when a finding of change in the character of the neighborhood is made, it merely gives the Commissioners the ability to grant a piecemeal rezoning, but does not require it.

The change or mistake criteria are not applicable to this request.

C. COMPATIBILITY WITH EXISTING AND PROPOSED DEVELOPMENT

The existing R-16 zoning would allow for development and residential dwelling types that would be compatible with surrounding existing development. All of the surrounding properties in the vicinity of the site are developed. The proposed deletion of the two conditions would not allow for development that would be incompatible with existing development in the neighborhood.

D. POPULATION CHANGE

The maximum potential for 144 dwelling units would generate a population increase of approximately 389 people. This potential population represents 21% of the current neighborhood population of 1,848 based on 2010 Census Block data.

E. ADEQUACY OF PUBLIC FACILITIES AND SERVICES

Water and sewer capacity in the New Design Water system and the Ballenger/McKinney waste water system are adequate to serve development of the site. All of the schools serving the site are currently under capacity though Ballenger Elementary is right at 99%. The Westview Fire Station is located less than ½ mile from the site.

F. PRESENT AND FUTURE TRANSPORTATION PATTERNS

The development would access New Design Rd., which has been improved to a 4-lane divided roadway and would be able to accommodate the expected traffic from this site. There is already a curb cut and median break for potential development of the site.

G. RELATIONSHIP TO THE COMPREHENSIVE PLAN

The site is designated High Density Residential (12-20 dwellings/acre) on the County Comprehensive Plan. The maximum development on the site, with 144 dwelling units, would result in a gross density of 15 dwellings/acre. The proposed deletion of the two conditions would allow for development that would still be considered consistent with the High Density Residential designation on the County Comprehensive Plan.

VII. Staff Recommendation

Staff recommends APPROVAL of the request, R-88-50 (A), to delete conditions #2 and #3 of the original rezoning Ordinance # 89-39-570 based upon:

1. A review of the Approval Criteria as set forth in § 1-19-3.110.4 and summarized in section VI. of the staff report.